

NOT TO BE INCLUDED
IN BOUND VOLUME

PHG
New York, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLANTIC VEAL & LAMB, INC.

and

Cases 29-CA-24484
 29-CA-24619
 29-CA-24669

KNITGOODS WORKERS' UNION,
LOCAL 155, UNION OF NEEDLETRADES,
INDUSTRIAL & TEXTILE EMPLOYEES, AFL-CIO

ORDER DENYING MOTION FOR RECONSIDERTION

On June 27, 2012, a three-member panel of the National Labor Relations Board issued its Second Supplemental Decision and Order in the above-entitled proceeding. The Board majority reversed the administrative law judge and found that the Respondent, Atlantic Veal & Lamb, Inc., failed to meet its burden to show that discriminatee George Ogando willfully concealed interim earnings from the Board. The Board ordered the Respondent to make Ogando whole for the period from November 15, 2001 until June 7, 2004. Thereafter, on July 25, 2012, the Respondent filed a Motion for Reconsideration. The Acting General Counsel filed an opposition to the motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board, having considered the matter, denies the Respondent's motion because the Board lacks jurisdiction to reconsider its 2004 Decision and Order and

because the Respondent's motion, insofar as it seeks reconsideration of the Board's Second Supplemental Decision and Order, lacks merit.

On June 30, 2004, the Board issued the underlying decision in this case, finding, in relevant part, that the Respondent unlawfully discharged Ogando in violation of Section 8(a)(3) and (1) of the Act. The Board's Decision and Order, which included a make-whole remedy for Ogando, was subsequently enforced by the United States Court of Appeals for the District of Columbia Circuit.¹

In its motion, the Respondent asserts that a Board finding in its Second Supplemental Decision and Order—that Ogando lied to someone about his interim earnings—negates the judge's credibility findings in the underlying unfair labor practice case, where the judge credited Ogando over the Respondent's witnesses. Based on that assertion, the Respondent requests that the Board reconsider its original decision.

We lack jurisdiction to grant the Respondent's motion. As stated above, the Board's Order in the underlying case has been enforced by the D.C. Circuit.² The court's judgment and decree are final, subject only to Supreme Court review. See, e.g., *Grinnell Fire Protection Systems Co.*, 337 NLRB 141, 142 (2001) (Board has no jurisdiction to modify a court-enforced Order); *Regional Import & Export Trucking Co.*, 323 NLRB 1206, 1207 (1997) (same). Accordingly, the Board's finding that the Respondent unlawfully discharged Ogando is the law of the case.

To the extent that the Respondent's motion requests that the Board reconsider its Second Supplemental Decision and Order, we reject the request because it lacks

¹ *Atlantic Veal & Lamb, Inc.*, 342 NLRB 418 (2004), enfd. per curiam 156 Fed. Appx. 330 (D.C. Cir. Oct. 27, 2005).

² *Atlantic Veal & Lamb, Inc. v. NLRB*, 156 Fed. Appx. 330 (D.C. Cir. Oct. 27, 2005).

merit. Section 102.48(d)(1) of the Board's Rules and Regulations provides, in pertinent part, that a party to a proceeding may, because of extraordinary circumstances, move after the decision for reconsideration, rehearing, or to reopen the record. The Respondent has not presented any extraordinary circumstances that require reconsideration.³ Indeed, although the Respondent requests that the Board reassess credibility, it has not offered any evidence, either new or previously undiscoverable, in support of that request.

Accordingly, we shall deny the Respondent's motion.

IT IS ORDERED that the Motion for Reconsideration is denied.

Dated, Washington, D.C., August 23, 2012.

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ Member Hayes adheres to the views expressed in his dissent in the Second Supplemental Decision and Order with respect to Ogando's backpay, but he agrees with his colleagues that the Board lacks jurisdiction to reconsider the underlying unfair labor practice decision and the Respondent has not established grounds warranting reconsideration of the Second Supplemental Decision under Sec. 102.48(d)(1) of the Board's Rules and Regulations.